

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7156

Amended Petition of UPC Vermont Wind, LLC, )  
for a Certificate of Public Good, pursuant to )  
30 V.S.A. § 248, authorizing the construction )  
and operation of a 40 MW wind electric )  
generation facility, consisting of 16 wind )  
turbines, and associated transmission and )  
interconnection facilities, in Sheffield and )  
Sutton, Vermont, to be known as the "Sheffield )  
Wind Project" )

Order entered: 8/3/2009

**ORDER RE: POWER PURCHASE AGREEMENTS**

**Introduction**

In an Order and Certificate of Public Good ("CPG") issued August 8, 2007, the Public Service Board ("Board") approved the Petition of UPC Vermont Wind, LLC ("UPC")<sup>1</sup> to construct and operate a 16-turbine, 40-megawatt wind electric generation facility and associated transmission and interconnection facilities. Condition 3 of the CPG, as modified by an Order issued October 1, 2007, states:

UPC shall make all reasonable efforts to enter into diverse, long-term, stably priced power contracts with Vermont utilities. UPC shall provide an update of any negotiations with Vermont utilities 90 days after the date of this Order. Prior to commencement of construction, UPC must produce copies of such contracts entered into with Vermont utilities for Board review to determine if the contracts contain appropriate terms and conditions, including price stability, to promote the general good of the State of Vermont. Along with the contracts, UPC must also file an explanation as to how the contracts promote the general good of the state. If, after good-faith negotiations on the part of UPC and the utilities, UPC cannot reach an agreement, it may file a statement explaining why an agreement cannot be reached and why the Board should modify or remove this requirement. For any

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1. UPC later changed its name to Vermont Wind, LLC ("Vermont Wind").

UPC filings made pursuant to this condition, other parties shall file any comments and responses within two weeks of the UPC filing.

On February 27, 2009, Vermont Wind filed copies of power purchase agreements ("PPAs") that it intends to enter into with the City of Burlington Electric Department ("BED") and Vermont Electric Cooperative, Inc. ("VEC").

On June 23, 2009, Vermont Wind filed copies of a power purchase agreement it intends to enter into with Washington Electric Cooperative, Inc. ("WEC"). Vermont Wind's filing includes supporting affidavits from Steve Vavrik of First Wind Energy, LLC (an affiliate of Vermont Wind), Craig Kieny of VEC, and Kenneth Nolan of BED.

Comments on the PPAs were filed by Ridge Protectors, Inc. ("Ridge Protectors") on March 12 and July 8, 2009, and by the Vermont Department of Public Service ("Department") on March 13 and July 1, 2009.

On July 15, 2009, Vermont Wind responded to Ridge Protectors' and the Department's comments.

In today's Order, we conclude that Vermont Wind has complied with Condition 3.

### **Parties' Filings**

#### **The PPAs filed by Vermont Wind**

Vermont Wind's February 27 filing includes a proposed PPA with BED and two proposed PPAs with VEC. Under its PPA, BED would purchase 16 MW of the energy and renewable energy credits ("RECs") for a fixed price, with escalator, for a ten-year term. As for VEC, under one contract it would purchase 25% of the project output for years one through ten, then 50% of the output for years eleven through twenty. The price is a discount off of the spot-market price. Under its second PPA, VEC would purchase 25% of the energy, capacity, RECs, and ancillary services for a ten-year term at a fixed price, with escalator.

Under the PPA that Vermont Wind filed on June 23, WEC would purchase 10% of the energy, capacity, RECs, and ancillary services for a fixed price, with escalator, over a twenty-year term.

Vermont Department of Public Service

In its March 13 comments, the Department states that the PPAs with BED and VEC do not adequately address price-stability concerns in years 11 to 20 of the contracts. However, in its July 1 comments, the Department concludes that Vermont Wind has adequately addressed the requirements of Condition 3. Specifically, the Department states that the affidavits from Craig Kieny of VEC and Kenneth Nolan of BED (included with Vermont Wind's June 23 filing) explain why "different arrangements were not attractive or achievable;" therefore, "the Department believes that all reasonable efforts were made to enter into long-term, stably priced contracts as required by Condition 3 and that the condition is therefore satisfied."<sup>2</sup>

The Department does dispute one point in Vermont Wind's June 23 filing. According to the Department, Vermont Wind misrepresented the Department's position in claiming that the Department had not, during technical hearings, raised concerns with a PPA-pricing mechanism based on a set percentage below the locational marginal price.

Ridge Protectors, Inc.

In their March 11 comments, Ridge Protectors contends that hearings are necessary "to explore the many issues related to the PPAs."<sup>3</sup> Ridge Protectors identifies one such issue: "Specifically, is the price for the power pegged to providing a reasonable rate of return to UPC or is it in fact pegged to how much UPC can get away with?"<sup>4</sup>

In its July 8 comments, Ridge Protectors reiterates its position as stated in their March 11 filing. Ridge Protectors further states that, based on the Department's July 1 comments, "UPC has apparently distorted, if not misrepresented, the record in this proceeding."<sup>5</sup> Ridge Protectors claims:

It is clear the DPS shares our concern that Vermont ratepayers will receive little or no benefit from contracts that are pegged to the Real Time Locational Marginal

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2. Department letter filed July 1, 2009, at 1.

3. Ridge Protectors' letter filed March 12, 2009, at 1.

4. *Id.*

5. Ridge Protectors' letter filed July 8, 2009, at 1.

Price paid by ISO-New England. It is also clear that such a pricing mechanism is not tied to the real costs of the seller.<sup>6</sup>

Ridge Protectors repeats its request for a hearing, which, it asserts:

. . . should include more parties than UPC and DPS so that a clear understanding of the costs and benefits may be gained by the ratepayers and by those affected by this project.

The public is entitled to a full airing of the issue of whether the economic benefit alleged to be derived from UPC's proposal is really sufficient to compensate Vermonters and the public for the loss of historic and important ridgelines. While the Board may have concluded that there were sufficient benefits without the PPA, it also conditioned the CPG on having a PPA that was both the result of good faith efforts by UPC and was fair and reasonable for the ratepayers of Vermont.<sup>7</sup>

#### Vermont Wind's Response to Ridge Protectors and the Department

Vermont Wind contends that the four PPAs collectively demonstrate compliance with Condition 3 of the CPG. Vermont Wind observes that "[t]he PPAs will result in Vermont selling 80% of the power output to Vermont utilities over the Project's anticipated life, with 42.5% of the total output sold under fixed term prices."<sup>8</sup> Vermont Wind asserts that over the past several years, ten-year agreements have been the norm for most wind-facility PPAs in New England. Vermont Wind further contends that the affidavits accompanying its June 23 filing demonstrate that it has made good-faith efforts to enter into stably priced contracts with Vermont utilities.

Vermont Wind claims that Ridge Protectors has "not raised any specific and significant issue within the scope of Condition 3 that merits additional hearings."<sup>9</sup> Vermont Wind disputes the relevance of Ridge Protectors' concern that the contract prices do not reflect Vermont Wind's costs. Vermont Wind further objects to Ridge Protectors' call for a balancing of the overall costs and benefits of the project as part of the review of the PPAs; according to Vermont Wind, such a

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6. *Id.*

7. *Id.* at 2.

8. Vermont Wind letter filed June 23, 2009, at 1.

9. *Id.* at 6.

balancing is irrelevant to the issue of compliance with Condition 3 and, to the extent that it was relevant, should have been raised in the original (pre-CPG) proceeding.

As for whether its June 23 filing misrepresented the Department's previous position, Vermont Wind asserts that it did not intend to misrepresent, and that it and the Department have a good-faith basis for their characterizations. Vermont Wind further contends that the alleged misrepresentation is of no import to the ultimate question of whether it has satisfied Condition 3.

### **Discussion and Conclusions**

We begin with a consideration of Ridge Protectors' request for a hearing. As we have previously held in this proceeding, "[t]o justify further discovery or hearings regarding a compliance filing, a party should demonstrate that the compliance filing raises a significant issue that was not, and could not reasonably have been, adequately addressed during the pre-certification evidentiary hearings."<sup>10</sup> Ridge Protectors has not identified any specific or significant issues that were not, and could not reasonably have been, raised and addressed in the pre-CPG hearings. The only specific issue that Ridge Protectors has raised is whether "the price for the power [is] pegged to providing a reasonable rate of return to UPC." Vermont Wind correctly observes that, as a merchant generator, its costs are irrelevant to a determination of whether these PPAs contain appropriate pricing terms and, more broadly, irrelevant to whether the project satisfies the criteria of 30 V.S.A. § 248.

Other than this issue of whether the PPAs reflect Vermont Wind's costs, Ridge Protectors has raised only general concerns regarding the overall balancing of the project's benefits and costs, and the need to explore the "many issues related to the PPAs," issues that are not specified in Ridge Protectors' comments.

We thus conclude that Ridge Protectors has not demonstrated that the PPA compliance filings raise a significant issue that was not, and could not reasonably have been, adequately addressed during the pre-certification evidentiary hearings. Accordingly, we deny Ridge Protectors' request for a hearing.

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10. Order of 5/14/08 at 6.

We now turn to whether Vermont Wind's filings comply with Condition 3. The condition (which is quoted in full at the beginning of this Order) requires Vermont Wind to:

make all reasonable efforts to enter into diverse, long-term, stably priced power contracts with Vermont utilities. . . . Prior to commencement of construction, UPC must produce copies of such contracts entered into with Vermont utilities for Board review to determine if the contracts contain appropriate terms and conditions, including price stability, to promote the general good of the State of Vermont.

Our August 8, 2007, Order includes the following discussion of pricing stability:

The term "stably priced" that appears in [30 V.S.A.] Section 8001 is not fully explained in the statute. Although one possible description would be a contract with a fixed price over the term of the contract (that could include adjustments for inflation), this would constitute only one example. Other examples include (1) an indexed contract with price collars such that the price does not fall below or rise above certain amounts and (2) a fixed-price contract with a low market adjuster, such as the power purchase agreement reviewed in the sale of the Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC.<sup>11</sup>

In addition, it is possible that a contract could contain more than one type of price term. For example, a contract could state that a certain percent of the output would be sold at a fixed price, a certain percent would be sold at an indexed price containing collars, and a final percent of the output would be sold at a discount off the regional power market price. Such a diverse power purchase contract would help shield ratepayers from economic impacts arising from fluctuations in regional power market prices and would provide an economic benefit to the state.<sup>12</sup>

We conclude that the four PPAs submitted by Vermont Wind satisfy the requirements of Condition 3, consistent with our August 8, 2007, Order. The PPAs will result in a substantial percentage of the project's output being purchased by Vermont utilities at fixed prices (with defined escalation factors): 75 percent of the output in the first ten years of operation, and 10 percent in the next ten years. While the fixed-price purchases are much smaller in the second ten-year period, Vermont Wind has demonstrated that this is not only consistent with other market transactions, but also reflects the substantial potential collateral requirements and other

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11. See Docket 6545, Order of 6/13/02.

12. Order of August 8, 2007, at 39.

considerations faced by purchasing utilities for long-term contracts.<sup>13</sup> Thus, we conclude that Vermont Wind has made all reasonable efforts to enter into diverse, long-term, stably priced power contracts with Vermont utilities, that the four PPAs filed by Vermont Wind contain appropriate terms and conditions, including price stability, to promote the general good of the State of Vermont, and that Vermont Wind has complied with Condition 3.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 3<sup>rd</sup> day of August, 2009.

<u>s/James Volz</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/David C. Coen</u>	)	
	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 3, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*

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13. See Kieny affidavit at 6–7; Vavrik affidavit at 4–5; Nolan affidavit at 3.